

**EVIDENCE — Proof of Prior Conviction — Defendant's admission while testifying is sufficient for court to find that allegation of prior is true — Revised 3/2010**

Before 1996, a defendant was entitled to a jury trial on his prior felony convictions. *See generally State v. Quinonez*, 194 Ariz. 18, 19, ¶ 5, 926 P.2d 267, 268 (App. 1999). Even then, the defendant could waive his right to a jury trial on his prior convictions by admitting them on the stand. "If the defendant admits the prior conviction during testimony at the trial, the court may, without submitting the matter to the jury, find that the allegation of prior conviction is, in fact, true." *State v. Ketchum*, 191 Ariz. 415, 416, 956 P.2d 1237, 1238 (App. 1997), *quoting State v. Gilbert*, 119 Ariz. 384, 385, 581 P.2d 229, 230 (1978). Since 1996, under A.R.S. § 13-703(N) [formerly 13-604(P)], the court, not the jury, determines whether the defendant has a historical prior felony conviction. That subsection provides in part, "The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if an allegation of prior conviction is charged in the indictment or information and admitted or found by the court." Thus, if a defendant chooses to take the stand and admit his prior convictions, he waives his right to have a trial on the existence of his prior convictions.